

**STATE WATER RESOURCES CONTROL BOARD
UNDERGROUND STORAGE TANK REGULATIONS
TITLE 23, DIVISION 3, CHAPTER 16, CCR**

INITIAL STATEMENT OF REASONS

PROBLEM, REQUIREMENT, OR OTHER CONDITION ADDRESSED

These proposed regulations amend sections 2621, 2632, 2634, 2635, 2636, 2637, 2638, 2661, 2666, 2711 and 2713, delete the forms and instructions in Appendix V, and amend the form in Appendix VI following section 2714, in Title 23 of the California Code of Regulations (CCR). These regulatory changes are needed in order to correct non-substantive errors in the current regulations and to implement the underground storage tank (UST) permit application and data reporting requirements of Health and Safety Code, Chapter 6.7, sections 25286 and 25299.7. Many of the amendments proposed by the State Water Resources Control Board (State Water Board) are made to conform to amendments proposed by the California Environmental Protection Agency (CalEPA) through a concurrent rulemaking.

These amendments to CCR, Title 23 (hereafter Title 23) will:

1. Amend the references to UST operating permit application "Form A," "Form B," and "Form C" throughout Title 23, Chapter 16. These amendments reflect concurrent regulatory changes to the title and content of these forms that were previously revised and relocated from Title 23, Appendix V (following § 2714) to CCR, Title 27, Division 3, Subdivision 1, Chapter 6.
2. Specify that UST owners and operators use a new standard form for submitting new and previously required information on procedures for monitoring. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA. This standard form will make it easier for owners and operators to provide complete and accurate information about their monitoring program, and will promote consistency among the more than 100 local regulatory agencies implementing the UST program in California.
3. Specify that local regulatory agencies use a new reporting format for submitting new and previously required information on UST statistics, inspections, and enforcement activities. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA.
4. Make several non-substantive clarifications and corrections to unclear sections or erroneous citations and references within Title 23, Chapter 16.

General Statement of Reasons

California's Legislature enacted Health and Safety Code (HSC) Chapter 6.7 in 1984, creating a regulatory program for USTs storing hazardous substances. Since then, the Legislature has amended Chapter 6.7 in response to federal mandates relating to USTs, or new information regarding changing industry practices and/or the performance of USTs meeting then current UST regulatory standards in California. Various amendments to Chapter 6.7 in recent years have imposed new construction and monitoring

requirements for USTs that cannot be documented properly on the UST permit application forms currently in regulation. Therefore, updated versions of the UST permit application forms are needed.

The UST permit application forms, revised and relocated from Title 23 to CCR, Title 27, Division 3, Subdivision 1, Chapter 6 via a 1999 CalEPA rulemaking, are concurrently amended by CalEPA. The revised forms, as well as a new standardized monitoring plan form, are designed to be easier and less time consuming for local regulatory agencies, UST owners and operators to complete. Additionally, the Report 6 used by CUPAs is revised via concurrent CalEPA rulemaking to standardize Red Tag reporting and to meet US EPA UST data reporting requirements. This rulemaking updates each of the Title 23 references to the amended permit application forms and Report 6.

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Based on careful review of the federal UST statutes and regulations, the State Water Board has determined that none of the proposed regulations conflicts with, or duplicates, federal rules. The State Water Board proposes to adopt these regulations, which are different from federal regulations, because Health and Safety Code, Chapter 6.7, section 25286 requires submittal of information that differs from federal requirements.

ALTERNATIVES CONSIDERED

The State Water Board has considered alternatives to these regulations. Alternatives considered are discussed in the Detailed Statement of Reasons below. The State Water Board has determined that no alternative to these regulations would be more effective or as effective and less burdensome to the affected industry, local governments, and state agencies than the proposed regulations.

DETAILED STATEMENT OF REASONS

The specific reason for each amended, moved, renumbered, added, or deleted regulation is summarized below.

Section 2621. Exemptions to the Regulations.

Subdivisions (a)(3) and (a)(16) are amended to correct an erroneous reference to a section of Health and Safety Code, Chapter 6.7. The definition of the term “underground storage tank” is found in Chapter 6.7, section 25281(y), not 25281(x) as currently referenced. This is a non-substantive change.

Section 2632. Monitoring and Response Plan Requirements for New Underground Storage Tanks Constructed Pursuant to Section 2631

Subdivision (d)(1) is amended to require that the written procedure for monitoring must be submitted on a standardized form that is added to Title 27 via concurrent rulemaking. Current regulations require submittal of written monitoring procedures. This amendment does not require submittal of new information, but specifies the format in which the currently required information must be submitted. Requiring a standardized form will promote consistency in recordkeeping, and has significant benefits for local regulatory agencies and UST owners. Local regulatory agencies have often indicated that the written monitoring plans currently submitted by UST owners and operators are inaccurate and do not provide adequate detail. UST owners who operate facilities within multiple regulatory jurisdictions have commented that it is burdensome to submit written monitoring procedures in various formats and levels of detail depending on the regulatory jurisdiction. Both of these concerns are resolved by requiring use of a standardized form.

Section 2634. Monitoring and Response Plan Requirements for New Underground Storage Tanks Constructed Pursuant to Section 2633.

Subdivision (d)(2) is amended to require that the written procedure for monitoring must be submitted on a standardized form that is added to Title 27 via concurrent rulemaking. Current regulations require submittal of written monitoring procedures. This amendment does not require submittal of new information, but specifies the format in which the currently required information must be submitted. Requiring a standardized form will promote consistency in recordkeeping, and has significant benefits for local regulatory agencies and UST owners. Local regulatory agencies have often indicated that the written monitoring plans currently submitted by UST owners and operators are inaccurate and do not provide adequate detail. UST owners who operate facilities within multiple regulatory jurisdictions have commented that it is burdensome to submit written monitoring procedures in various formats and levels of detail depending on the regulatory jurisdiction. Both of these concerns are resolved by requiring use of a standardized form.

Section 2635. Installation and Testing Requirements for All New Underground Storage Tanks.

Subdivision (d) is amended to reflect a name change in the “Certificate of Compliance for Underground Storage Tank Installation Form C.” That form was revised and relocated to Title 27 via a 1999 CalEPA rulemaking and exists in Title 27, Division 3, Subdivision 1, Chapter 6. CalEPA is concurrently renaming it “Underground Storage Tank Certification of Installation/Modification.” The amendment to subdivision (d) to reflecting the name change conforms to the concurrent amendment by CalEPA.

Section 2636. Design, Construction, Installation, Testing, and Monitoring Requirements for Piping.

Subdivision (c)(2) is amended to reflect a name change in the “Certificate of Compliance for Underground Storage Tank Installation Form C.” That form was revised and relocated to Title 27 via a 1999 CalEPA rulemaking and exists in Title 27, Division 3, Subdivision 1, Chapter 6. CalEPA is concurrently renaming it “Underground Storage Tank Certification of Installation/Modification.” The amendment to subdivision (c)(2) to reflecting the name change conforms to the concurrent change by CalEPA.

Subdivision (f)(3) is amended to clarify that November 9, 2004 was the last allowable date for any alternative monitoring methods used to meet the automatic line leak detector requirement of subdivision (f)(1). The amended text makes it clear that the alternative monitoring method described in the second sentence of subdivision (f)(3) is not a unique method whose use is allowed beyond November 9, 2004, but rather an example of the type of alternative monitoring methods whose use was allowable only until November 9, 2004.

§ 2637. Secondary Containment Testing.

Subdivision (a) is amended to clarify that periodic secondary containment testing performed within the maximum allowable 36 month interval (at 30 or 32 month intervals, for example) satisfies the periodic testing requirements. This clarification is made to ensure that UST owners who voluntarily test their secondary containment more frequently than the maximum allowable 36 month interval can use those more frequent tests to satisfy the periodic secondary containment testing requirement.

§ 2638. Annual Certification of Monitoring Equipment.

Subdivision (f) is amended to clarify that tank testers licensed by the State Water Board must include their license number on each monitoring equipment tag. Existing requirements specify that monitoring system certification must be performed by either a Contractors State License Board (CSLB) licensed contractor or a State Water Board licensed tank tester. Existing requirements further specify that the contractor’s license number must be included on all monitoring equipment tags. This change clarifies that the appropriate license number (tank tester or contractor) must be included on all equipment tags, regardless of whether the monitoring equipment is being certified by a CSLB licensed contractor or a State Water Board licensed tank tester.

§ 2661. Requirements for Repairing Underground Storage Tank.

Subdivision (c) is amended to correct a typographical error. The word “required” has been replaced by the word “repaired” as was originally intended.

Section 2666. Requirements for Upgrading Underground Piping.

Subdivision (e) is amended to correct an erroneous reference to 2636(h)(2) and (3). The referenced section was moved from section 2636, subdivision (h) to subdivision (g) via rulemaking in 2004, but the reference in subdivision 2666(e) was not updated to reflect that change. This amendment corrects the erroneous reference and restores the original intent of this subdivision.

Section 2711. Information and Application for Permit to Operate an Underground Storage Tank

Subdivision (a)(13) is amended to allow a permit application to be signed by the UST operator, facility owner or facility operator. This amendment is made to be consistent with Health and Safety Code, Chapter 6.7, section 25286(a).

Subdivision (c) is amended to reflect name changes in the “Underground Storage Tank Permit Application - Form A” and “Underground Storage Tank Permit Application – Form B.” Those forms were revised and relocated via California Environmental Protection Agency rulemaking in 1999 to Title 27 and currently exist in Title 27, Division 3, Subdivision 1, Chapter 6. They are being renamed “Underground Storage Tank Operating Permit Application – Facility Information” and “Underground Storage Tank Operating Permit Application – Tank Information” by concurrent CalEPA rulemaking. The amendment to subdivision (c) conforms to the change proposed by CalEPA.

Subdivision (d) has been deleted because the reporting requirement formerly in this section is obsolete. Requirements for local regulatory agencies to report data to the State have been consolidated into Title 27, and the California Association of Environmental Health Administrators no longer collects this data for the State Water Board.

Section 2713. Local Agency Reporting Requirements.

Subdivision (c) is amended to require submittal of information on UST statistics and inspections on a semi-annual rather than quarterly basis. This data is collected from local regulatory agencies in order to comply with reporting requirements established by the United States Environmental Protection Agency (US EPA), and the federal reporting requirement is for semi-annual data, not quarterly data. Subdivision (c) is also amended to be consistent with concurrent Title 27 amendments requiring that the information be submitted using “Semi-Annual Underground Storage Tank Program Report 6.”

Subdivision (c)(4) is amended to require reporting of facilities in compliance with “release detection and release prevention” requirements rather than “leak detection” requirements. These changes are made to be more descriptive and to include compliance data for both release detection and release prevention requirements.

Subdivision (c)(5) is amended. The requirement for reporting formal and informal enforcement actions is moved, with amendments, to subdivision (d). This move is made because formal and informal enforcement actions are not included in the “Semi-Annual Underground Storage Tank Program Report 6” so it is appropriate to list the requirements independently. The text formerly located in subdivision (c)(6) is moved to subdivision (c)(5), thus deleting subdivision (c)(6).

Subdivision (d) is added to clarify that formal and informal enforcement data must be reported using “Annual Enforcement Summary Report 4.” The requirement for reporting enforcement data, without specifying a reporting format, was previously contained in subdivision (c)(6). This amendment is made to be consistent with current Title 27 regulations requiring that enforcement data be submitted using “Annual Enforcement Summary Report 4.”

Appendix V – Certificate of Tank and Piping Installation (following § 2714 and Appendices I-IV)

The title of Appendix V and the forms and instructions in Appendix V are deleted. Appendix V contains obsolete forms titled “Underground Storage Tank Permit Application-Form A,” with instructions, “Underground Storage Tank Permit Application-Form B,” with instructions, and obsolete instructions for “Tank Installation Certification-

Form C.” These forms and instructions were revised and relocated to Title 27 via CalEPA rulemaking in 1999 but erroneously have remained in Appendix V. These forms and instructions, including Form C, all as subsequently revised, exist in Title 27, Division 3, Subdivision 1, Chapter 6 and amendments to these forms and instructions are proposed by concurrent CalEPA rulemaking. The State Water Board is concurrently amending internal references to these forms to correspond with the forms in Title 27, Division 3, Subdivision 1, Chapter 6. Appendix V will be reserved for future use by the State Water Board.

Appendix VI – Monitoring System Certification (following § 2714 and Appendices I-V)

The “Site Address” field at the bottom of page 1 of the “Monitoring System Certification” form has been amended to read “Testing Company Address.” The site address of the UST monitoring system being certified is already reported under heading “A – General Information” at the top of page 1, so it need not be reported a second time at the bottom of the page. This amendment clarifies that the address of the testing company who conducts the monitoring equipment certification should be included on the certification form.